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ABSTRACT

Arguing that the Federal Communications Commission's (FCC) decision abolishing the Fairness Doctrine rested on unquestionable and untestable ideological assumptions, this paper asserts that the FCC has pursued broadcast deregulation with inadequate consideration of either social scientists' knowledge about the news media and their audiences, and without providing a theoretically and cogently defensible interpretation of their policies being in the public interest. The paper articulates a theory of public interest, generates five necessary statements concerning the public interest, and compares these statements with the FCC's Fairness Doctrine decision. The paper concludes that the arguments on behalf of scrapping the Fairness Doctrine are a form of rationalization where the hidden agenda may have been the key component: the legal arguments are primarily forms of ideological rationalization designed to justify interests rather than principles. Thirty-eight notes are included and 65 references are attached. (RS)

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THE FEDERAL COMMUNICATIONS COMMISSION AND THE FAIRNESS DOCTRINE: PUBLIC INTEREST FAILURE?

by

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THE FEDERAL COMMUNICATIONS COMMISSION AND THE FAIRNESS DOCTRINE: PUBLIC INTEREST FAILURE?

I. INTRODUCTION

U.S. public policy toward broadcasting in the 1980's shifted dramatically, however the Federal Communications Commission's (FCC or commission) most basic of charges, to regulate in "the public interest, convenience or necessity"[1] has not. The FCC, the most significant government agency outside of Congress involved in broadcast policy, began eliminating "unnecessary" government regulation, and instead chose reliance upon a vigorously competitive economic market.[2] They claimed economic markets would protect and expand an idealized "marketplace of ideas." However, the commission failed to provide consistent evidence supporting their decision, and instead relied on unquestionable and untestable ideological assumptions. The FCC's decision abolishing the broadcast Fairness Doctrine[3] is perhaps the most important and controversial case in point illustrating this policy shift. The Fairness Doctrine was a direct attempt, by means of government regulation, to foster diversity of ideas, and as such the commission's decision to eliminate the doctrine[4] provides the focus of this paper. I argue the FCC has

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[1] 47 USCS sec. 151 *et seq.*

[2] For an annotated selection of literature dealing with specific changes and interpretations of impacts of broadcast deregulation during the 1980s see Jung, 1989. Specific publications or articles which may be of particular interest are Federal Regulatory Directory, 1986; Broadcast Deregulation, 1985; Derthick and Quirk, 1985; Tunstall, 1986; Hagelin, 1986; Powers, 1987; Orton, 1987.

[3] The original doctrine is contained in 13 FCC 1246 (1949); updated 40 FCC 598 (1964) and justified in *Fairness Doctrine and Public Interest Standards*, 48 FCC 2d 1 (1974); sanctioned by legislation in 47 U.S.C. 315(a), 1959 Amendments to the Communications Act of 1934.

[4] FCC, 1987a.

pursued broadcast deregulation with inadequate consideration of: (1) knowledge that social scientists have developed about the news media and their audiences; or, (2) providing a theoretically and cogently defensible interpretation of their truly regulating in the public interest.

The FCC's decision to eliminate the Fairness Doctrine was premised on the grounds that audiences and media behave in the real world as they do in the ideal marketplace of ideas.[3] Though claiming the doctrine's elimination was in the public interest, the commission provided little substantive evidence in support of this assumption, and their decision provided for only the most optimistic scenarios of what to expect with its removal. FCC Chairman Dennis Patrick, justifying the 1987 commission decision, speaks of free press ideals, which he believes have been wrongfully denied broadcasters, and the marketplace of ideas:

> Freedom of speech is democracy's crown jewel. Without it, government ceases to be a faithful instrument of the people's will, and, all too often, becomes an instrument of oppression. ... The founding fathers .... placed their faith in the people, upon the assumption that free men and women would be able to distinguish truth from falsehood, the authentic from the fraudulent, the statesman from the charlatan. ... Faith in democracy entails a belief that political wisdom and virtue will sustain themselves in a free marketplace of ideas, without government intervention.[4]

Thus, by regulating broadcast content, the commission concluded that the Fairness Doctrine violated broadcaster's constitutional guarantees and posed the peril of government intimidation. Additionally, the threat of sanction for violating the fairness rules actually diminished the amount of high quality and diverse news on television causing consequences opposite of those intended. Simply replacing

[3] See FCC, 1985; 1987a; 1987b.
[4] Broadcasting (August 10, 1987): 32.

regulation with competition solved both the policy and the constitutional problems for broadcasters. But what of the constitutional rights of the public which the FCC is supposed to protect?. The commission's inadequately supported assumption is that competition would increase broadcasters' incentives to provide diverse news while enhancing their autonomy from unconstitutional government intrusion. Instead, I argue the commission failed to address other more serious concerns. What evidence exists of this idealized marketplace of ideas? Will this diverse marketplace be accessible and open to the public, or limited to those with means or influence? Where is the public actually even considered in this process? Most importantly, what exactly is the "public interest" which is protected here and how is it determined? Since the search for an answer to this final question will provide the focus for this paper, we must first explore what an appropriate theory of public interest would envisage. By identifying what I believe is meant by public interest, I will then seek to apply it to the FCC's decision eliminating the Fairness Doctrine, and provide an evaluation of how well the public's, as well as the public interest was protected in this case.

II. THEORIES OF PUBLIC INTEREST

Many scholars have written about public interest, but few have set out systematically to develop an integrated theory explaining how the public interest is to be determined and what is its proper application. I will try in this paper to articulate such a theory. This articulation will be based on the combined work of several scholars, and reflects what I believe the necessary conditions for making a public interest determination. Roland Pennock in 1962 argues that the Federal Communications Commission, beyond their technical requirement, is directed to pursue the public interest.[7] For Pennock the public interest is most basically a spur to conscience and to deliberation. As he says, private rights are not exhaustive of the public interest and private interests include much more than self-interests.[8] Though useful, Pennock does not provide much theoretic basis to the notion of public interest. However, he does acknowledge public interest is more than simply an aggregate of private and self-interest, and he correctly identifies an inherent conflict between First Amendment rights which are private rights, and normative variables that are said to be reflective of society.

Edgar Bodenheimer, writing at the same time as Pennock, asserts that although the public interest cannot be determined by a mechanical counting of private interests, it is likewise not permissible to identify it solely with the policy decisions of the public authorities.[9] In other words, it cannot be conceded that the public interest consists in whatever the public authorities by their fiat

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[7] Pennock, J. Roland, 1962: 179.
[8] *Id.* at 182.
[9] Bodenheimer, Edgar, 1962: 209.

declare it to be. Like Pennock, Bodenheimer does not further public interest theory as such, but he does contribute valuable parameters to its interpretation.

Clarke Cochran contributes to a theory of public interest by establishing its basic relationship with the broader concept of common good. Cochran asserts the common good is an end or a goal which is normatively defined and, hence, not perfectly or wholly attainable.[10] Policy in the common good preserves what community already exists, attempts to make it better wherever possible, and strives to extend it to those not yet or only imperfectly included.[11] Cochran argues that only by viewing the common good as the life of a community can a correct ethical account be given of the relation between the common good (or public interest) and individual goods (or interests).

Does Cochran's relationship between common good and self-interest describe the structure of current communication regulation? Cantor et al, make the point that the rational model of communication in the United States holds there is a free-enterprise system existing at the pleasure of the government, but essentially autonomous.[12] This rational model takes at face value the formal autonomy granted business enterprises dealing with the manufacture and transmission of culture and presents the government as an outside interference which encroaches upon organizational and individual freedom. Rather than government and business being antagonistic, however, Cantor et al claim they have been mutually supportive through the years. If this is the case, one must ask where is the place of the 'public' in the determination of the public interest?

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[10] Cochran, Clarke E., 1978: 237.
[11] *Id.* at 238.
[12] Cantor, Muriel G., and Cantor, Joel M, 1986: 84-5.

During the 1960s, some social action groups sought to involve themselves in the regulatory process. They questioned the ability of the FCC to regulate in the 'public interest' without consulting the public itself. Although the commission required broadcast licensees at that time to seek out conflicting views on controversial issues of public importance and ascertain community needs, tastes, and desires (or "problems"), the agency itself seldom actively solicited the public's views on the radio and television services they were receiving. It was as if the commission believed the public was an entity whose interests could best be served by ignoring them. The *United Church of Christ*[13] case altered this situation somewhat by finally providing a degree of legal clout to ordinary citizens. This 1966 decision established the right of representatives of the general public to intervene in broadcast licensing proceedings before the FCC. Though by no means all inclusive, it must be remembered that prior to this decision only other broadcasters alleging economic injury or electrical interference were granted standing to intervene. However, the public participation movement in FCC licensing and rulemaking actions reached its height in the 1970's. Declining financial support, court defeats, an expanded communication policy agenda, and deregulatory activities have diffused the impact of citizen groups on broadcasting in the 1980's.[14] However, the public remains a potentially potent factor in regulating the electronic media.

Where then does all this take us in our search for an appropriate theory of public interest? From Pennock we can say public interest is more than simply an aggregate of private and self-interest. From

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[13] *Office of Communication of the United Church of Christ v. FCC*, 359 F.2d 994 (D.C. Cir.). 1966.

[14] Cole and Oettinger, 1978; cf. Guimary, 1975; Padden, 1972; Shayon, 1974.

Bodenheimer we can say that although the public interest cannot be determined by a mechanical counting of private interests, nor can it be identified solely with the policy decisions of the public authorities. From Cochran we can say a sound theory of common good (or public interest) is an end or a goal which is normatively defined and not perfectly or wholly attainable. And as Cantor et al illustrate the current rational U.S. communication model fails to adequately separate the government which is supposed to protect public interest from the private interests which seeks its own benefit. This symbiotic effect provided by Cantor et al could possibly be counter-balanced by a more active use of the publics views themselves, but as we have seen this has not been the case. This disjointed situation could possibly be rectified if an underlying context of public interest could be determined. This is precisely what Marcus Raskin and Robert Reich have both attempted. Just as I have rather freely borrowed from Pennock, Bodenheimer, Cochran and Cantor et al above, I will now try to integrate Raskin's philosophic context of a theory of the common good with Reich's basic ideas of what constitutes public interest theory. Taken together, they identify an underlying philosophy of proper policy making in the common good.

Marcus Raskin sets out to identify not only a theory of common good, but an underlying philosophic context.[15] His philosophy initially requires a recognition of personal need of the other and the realization that we are born into relationships, institutions, problems and potentialities. Raskin's philosophic context requires a realization that the common good itself begins from an ensemble of prior rights which human beings can concretize in their relationship

[15] Raskin, Marcus G. 1986.

to each other and through each other as well as through and against social and state institutions.[16] The common good is not static for Raskin; it shifts with our understanding and our discoveries of what is possible, of what humankind can positively create.[17]

There are five important questions which comprise the common good for Raskin which should be kept in mind as political change is accepted. His first question is how should freedom be integrated into the common good? Second, is there is a universal definition of the common good which all people would readily recognize? Third, does responsibility for the common good rest with everyone or with trustees? Fourth, how do the common senses lead to the common good? Fifth, if it rests with everyone, does that mean the common good is derived from adding people's private interests with pragmatism being the way to find the additive common good?[18]

Perhaps the most important question raised by Raskin relevant to our present study is his fifth question which addresses the relationship between the private and public interest. Raskin asserts the currently popular pragmatic approach is based on the British philosophic thinking which held that private interests could be added together to make the common good. However, this approach can only be successfully applied when the people are members of the same social and economic class,[19] and as Raskin points out, utilitarian ideas have not successfully solved problems across class lines. Nor do they tell us how the private interests can be added together to make the common good. Pragmatists (or utilitarians), according to Raskin, see particular goals to be achieved; they operate incrementally.

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[16] *Id.* at 25.
[17] *Id.* at 27.
[18] *Id.* at 28-9.
[19] *Id.* at 37.

Pragmatists are not interested in the interrelationship between the particular problem they have carved out as "the problem" to the field in which the problem exists. Raskin believes that pragmatists, by considering their approach ideologically neutral, present their assumptions as already given and accepted. It follows that this then allows for no discussion of their most basic premises.

Raskin believes that pragmatic myths of the common good in a democracy assert people have capacities which are invariant and which are reflected in their observed and unconscious behavior. These capacities are what set the terms of the common good for the pragmatist. Raskin further states that such myths must also recognize that people are linked/bonded together as cells to each other and each recognizes the other has dignity and importance to one's self; there is recognition of each person's uniqueness which is undefinable because it can only be explained in terms of another.[20]

Another theorist whose views seem close to Raskins' is Robert Reich. In seeking to develop his own conception of public interest theory Reich first identifies the underlying assumptions and fallacies of the currently accepted utilitarian approach. He believes its core principles can be summarized as follows: people are essentially self-interested rather than altruistic and behave much the same way whether they are choosing a new washing machine or voting on a new board of education.[21] This utilitarian conception of the public good, or "public interest," is best understood as the sum of these individual preferences. Society is improved whenever some people's preferences can be satisfied without making other people worse off. The prevailing utilitarian assumptions also suggest there are ready means

[20] *Id.* at 82.
[21] Reich, Robert B., 1988: 1.

of answering the questions and reaching solutions. It is a matter of measuring what people want and analyzing the most efficient way of satisfying these wants, or of engineering compromises among competing groups purporting to speak for the self-interests of their members.

Reich believes the prevailing utilitarian view of policy making almost totally ignores other important values. It provides no guide to comparing, or trading off, one person's preferences against another's. In particular, it disregards the role of ideas about what is good for society and the importance of debating the relative merits of such ideas. It thus tends to overlook the ways such normative visions shape what people want and expect from their government, their fellow citizens, and themselves. Finally, the utilitarian approach disregards the importance of democratic deliberation for refining and altering such visions over time and for mobilizing public action around them. Here Reich suggests a need for a revised philosophy of policy making. His revised philosophy places ideas about what is good for society in a much more prominent position.[22] Reich believes it is the act of raising the salient public question that is often the key step, for this act subsumes the value judgments that declare something to be a problem, focuses public attention on the issue, and frames the ensuing public debate.

Drawing from these scholars, I will now provide statements of what I mean here by public interest. From these statements I will then evaluate whether the FCC's decision to eliminate its enforcement of the Fairness Doctrine served the public interest. First, the public interest is more than simply an aggregate of private and self-interest. Second, public interest is identified with more than solely

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[22] *Id.* at 3-4.

the policy decisions of the public authorities.[25] Third, public interest is an end or a goal which is normatively defined and, hence, not perfectly or wholly attainable. Fourth, public interest is inextricably linked with a notion of common good that requires a recognition of personal need of the other and the realization that we are born into relationships, institutions, problems and potentialities. As such, this approach to identifying the common good assumes, rather than denies, the existence of ideology, and initially calls for questioning of all underlying assumptions. Finally, our interpretation of public interest takes as its central concern the addressing of the role of ideas about what is good for society and the importance of debating the relative merits of such ideas. For it is in the act of raising salient public questions where value judgment can be identified and their appropriateness to the framing of public debate evaluated. With these five statements of assumptions, we are now ready to address the question of whether the public interest was indeed protected in the FCC's decision to eliminate the Fairness Doctrine. We shall now begin by reviewing the requirements and the actual application of the doctrine.

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[25] Ithiel de Sola Pool may capture this idea best when he says:

> "The broadcast model assumes that the government has a positive role to play as licensor and regulator. The optimistic notion that government is to play that role on behalf of citizen freedom rather than against it is not persuasive to those who are skeptical about the power of good will in political processes to guarantee good results." (Pool, 1983: p 135)

III. THE FAIRNESS DOCTRINE IN THEORY AND OPERATION

A. The Issue of Diversity

The Fairness Doctrine contained two explicit requirements: (1) broadcast stations devote a reasonable percentage of time to the discussion of controversial issues of public importance; and, (2) they provide reasonable opportunities for presentation of contrasting views on these issues. As a matter of record the commission rarely enforced the first part of the doctrine.[24] It was the second requirement, mandating some kind of balance and diversity, which generated most of the complaints and which commanded commission attention. In their decision eliminating enforcement the FCC stated they believed the second part of the doctrine served to undermine the first. The Commission's decision to discard the doctrine emphasized this perverse, "chilling" effect.[25]

It is worth noting that prior to the 1980s the commission believed this effect to be minimal. As the commission said in 1974, "[T]he purpose and foundation of the Fairness Doctrine is 'to preserve an uninhibited marketplace of ideas in which truth will undoubtedly prevail. ...'"[26] The 1974 FCC felt the economic market would not provide diversity of ideas because of scarcity; broadcast frequencies, hence broadcasting outlets were limited. But the 1974 commission went

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[24] *Brandywine-Main Line Radio*, Inc., 27 FCC2d 565 (1971), affirmed 473 F2d 16 (D.C. Circ., 1972). In a typical year, the FCC received five to ten thousand fairness complaints (mostly informally phone in) and issued six admonitions to stations. Only one station (a radio outlet in suburban Philadelphia) ever lost its license on Fairness Doctrine grounds. That station allegedly purveyed one-sided anti-semitic analysis of public issues.

[25] FCC, 1987a: Pars. 42-51.

[26] FCC, 1974: 26373.

further in justifying what they meant by scarcity beyond that of simple technical spectrum scarcity. They also felt it was necessary to induce vertical diversity within each individual station's programming on the assumption (and supported by social scientific evidence) that most audience members do not use multiple media.[27] The commission at that time felt the doctrine would yield vertical diversity, thereby preventing broadcasters from censoring or inhibiting the flow of ideas.

The recent commission has redefined diversity as it has sought to redirect policy. An emphasis on horizontal diversity has been replaced traditional commission reliance upon vertical diversity. Horizontal diversity is premised on the assumption that there is available a variety of ideas from a host of different media outlets. By redefining what criterion (horizontal rather than vertical) must be met to insure diversity, the FCC self-justifies its own current decision without allowing for questioning of its underlying assumptions and conclusions. Using horizontal diversity as its criterion now the commission can say scarcity of economic market participants no longer holds, and that means diverse news is readily available. In their 1985 fairness report the commission concludes that "the interest of the public in viewpoint diversity is fully served by the multiplicity of voices in the marketplace today. ..."[28] This assumes that autonomous audience members will actively search among the competing media in fashioning their views on public issues. Indeed, the commission even states, "[I]ndividuals ... can be expected to consult a variety of sources in a wide array of media."[29] The

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[27] FCC, 1974: 26376, ct. 26373; cf *Red Lion Broadcasting v. FCC*, 395 U.S. at 389.
[28] FCC, 1985: 35419.
[29] FCC, 1984: 28.

underlying assumption the commission is working under here assumes an active, independent citizenry that can obtain quality journalism through the mechanism of the competitive economic market. This assumption has consistently been shown incorrect by media scholars such as McCombs, Weaver, and Shaw in the 1970's.[30]

Had audience behavior and media behavior changed so dramatically from 1974 when the commission held the assumption that most audience members do not use multiple media? Social science research has certainly provided considerable reason to doubt the commission's decision to rely strictly on horizontal diversity.[31] The commission certainly fails to provide evidence of a significant rise in political interest or knowledge among Americans resulting from this horizontal diversity. The commission rationalizes its decision on an unconditioned faith in market competition. As Chairman Patrick's predecessor Mark Fowler expressing his vision of the commissions' future in 1982 said, "[T]he Commission should rely on the broadcasters' ability to determine the wants of their audiences through the normal mechanisms of the marketplace. The public's interest, then, defines the public interest."[32] We will not discuss the circularity of this statement now, but we will return to it later. For the present we need only concern ourselves with the fact that the commission fails to probe what the audience is actually seeking from those new media. By failing to probe what audiences are really seeking, the commission misses an important scarcity that remains

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[30] McCombs and Weaver, 1973; Shaw and McCombs, 1975.

[31] Behr and Iyengar, 1985; Erbring, Goldenberg and Miller, 1980; Iyengar and Kinder, 1986; Iyengar and Kinder, 1987; Iyengar, Peters and Kinder, 1982; Lowery and DeFleur, 1987; Mccombs, 1977; McCombs and Shaw, 1977; McCombs and Weaver, 1973; Shaw and McCombs, 1975;Hawkins and Pingree, 1981; McCombs and Shaw, 1976; Berkowitz and Rogers, 1986; McCombs and Gilbert, 1986, etc.

[32] Fowler and Brenner, 1982: 647-648.

despite the actual growth in number of TV and radio stations: demand for news and public affairs programming. If this competitive marketplace of ideas is to prosper as portrayed in the commission's rosy scenario, the discerning, informed, interested citizen of free press ideals would have to be a reality. It is my point that the commission in accepting their ideal as real seriously undermines the legitimacy of their decision.

Social scientific research has consistently shown that the scarcity of audience attention, the limited demand for detailed, multifaceted accountability news, has not changed.[33] Indeed, the audience's inclinations may further restrict information diversity even as competition and the number of producers expand. Despite the FCC's ascertainment of horizontal diversity, there is little indication that a significant amount of diverse information is being utilized by the audience as new media outlets proliferate. There is no evidence the public knows, cares, or acts more in national politics than before, or that they have developed different views as a result of the assumed increase of new ideas available on radio and television.

B. The Issue of Autonomy

In addition to its so-called "chilling effect" resulting from the requirements of the Fairness Doctrine, the commission also stated they found the Fairness Doctrine inhibited a broadcasters' autonomy. Their proposed remedy was to end the government's invasion of editorial decisions, and by itself this would lead to a better informed, more

[33] McCombs and Eyal, 1980; cf. Woods, 1986.

independent citizenship. This assumption neglects to address two crucial problems. First, the government itself plays an enormous role in shaping the content of all news, print and broadcast independent of the requirements of the Fairness Doctrine. Government has always managed print and electronic news to some degree, and will continue without the Fairness Doctrine. Government press officers can usually stage media events, withhold information, try to generate a positive slant on unfortunate developments, dissemble, and manage news coverage without generating criticism for invading the constitution.

The second problem the commission's broadcasters' autonomy argument fails to consider is that the pressures of the economic market may do more to diminish unadulterated free speech than any government regulation can. According to the FCC, freed of fairness (and some other) rules, broadcasters would have to respond only to economic market signals. However, the economic market is hardly an arena of independence: economic competition links the desires of consumers to the products of suppliers, the demands of advertisers and audiences to the broadcasters' programming. Making such connections is the very function of an economic market, and the need to cater to these demands unequivocally curtails broadcasters' expression. Only where broadcasters are willing and able to suffer economic losses are they truly independent of compulsion. Increased competition may even tighten the constraints of expression.

Economic competition forces broadcasters to minimize unnecessary costs and to invest in the most profitable programming. These pressures may yield reductions in spending on less profitable news and public affairs programming. Far from raising television's investment in covering public affairs, competition could reduce news budgets. In

fact, by the logic of the economic market, news budgets ought to shrink if consumers prefer entertainment programming. Competition may be changing the kinds of information emphasized, diminishing the availability of news that fosters citizenship. If public tastes run toward entertainment and away from hard news, increasing competition may yield more entertaining, "softer" news. It is a dangerous oversimplification to equate economic competition with better or more diverse journalism. This assumption lacks both common sense and social scientific data.

C. The Marketplace of Ideas

The idealized marketplace of ideas which the commission relies on has as an underlying assumption of harmony rather than conflict between the interests of idea purveyors and idea consuming citizens. But what guarantees are there broadcasters will provide for a better informed citizenry or one more able to resist manipulation by powerful media or government officials? It is difficult to accept the confident predictions made by the FCC of the effects to be expected as a result of dismissal of the doctrine. For the sake of argument, even if the Fairness Doctrine reduces the amount of issue programming on television, that itself could also be viewed as being a benefit to democracy. Interpreting the doctrines impact this way, one could argue that by reducing slant and advocacy on TV, the doctrine controls the medium's power to define and influence preferences on public issues, and reinforces the relative power of more informative and sober newspapers and magazines. But such subtle normative issues are totally ignored by the FCC. The commission should at least

acknowledge this kind of complexity and potential cost of deregulation. By burying its head and hoping for the best the commission has provided no contingency plan to intervene should the results not turn out so optimistically.

Conceding the FCC may prefer open to hidden news slant, and the point makes sense, the question remains whether openness will be the rule, whether the average audience member will detect slant, and whether audiences will seek and easily find alternative views on most matters. The commission acknowledges that "unbalanced" coverage may result from eliminating the doctrine. But it states it believes the economic market will prevent such imbalance from detrimentally influencing public opinion. As they say: "while some stations would likely be biased toward one side of an issue, other stations would likely favor the other side ... opposing points of view would in all likelihood still be available to the citizen on other stations or from other media."[34] However, as we have seen, there is little basis for confidence that most audience members would seek and find such opposing views if they were available (which itself is uncertain).[35] Nor is that to say anything of the prevailing media biases toward safe, acceptable, relatively conservative, 'mainstream' practices. In addition, ownership of the stations is in the hands, typically, of entrepreneurs (owners) who (a) have class biases and predispositions, and (b) depend on advertisers, and (c) whose bottom line is turning a profit.[36] The marketplace is the incorrect place to depend on protection of a common good.

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[34] FCC, 1984: 32.
[35] See n. 31, *supra*.
[36] Notes of Prof. Joseph Haberer, Department of Political Science, Purdue University. April 1989.

IV. CONCLUSION

Communications policy decisions can significantly affect the nation's political agenda. That is why the Fairness Doctrine and other communications policy choices are so significant to democracy. The commission's incompletely presented case eliminating the doctrine should raise deep concern. The commission reveals, but does not discuss, the power of cultural values, even myth, in the analysis of communications policy. Specifically, the FCC's reasoning founders upon the myth that economic competition inevitably serves free press ideals. Analysis of this decision also needs to focus on the ideological agenda of the Reagan administration. The arguments on behalf of scrapping the Fairness Doctrine strike me as a form of rationalization where the hidden agenda may have been the key component: the legal arguments are primarily forms of ideological rationalizations designed to justify interests rather than principles.

Before summarizing, I believe it worth stating that I do not mean we should resurrect the myth of effective government regulation. The FCC does indeed make a convincing case that fairness regulation has not encouraged diversity, and may even have diminished it. This suggests the very real possibility that the diversity goal itself is illusory.[37] In all likelihood neither regulation as practiced in the past, nor economic competition which the commission offers as a substitute can produce the "marketplace of ideas" envisioned by the

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[37] Perhaps Bruce Owen may very well be correct when he says:

> " . . . diversity is really a red herring for our purposes. When it refers to content it has no necessary relationship either to freedom or to economic efficiency and consumer welfare. If, on the other hand, it refers to the sources of media messages, then it may be a measure of freedom of access, provided that the society itself is heterogeneous." (Owen, 1975: p. 21)

FCC. Nonetheless, even assuming a less demanding and accountable utilitarian standard of public interest, the commission should acknowledge all the uncertainties and say explicitly why the benefits of removing the doctrine outweigh the risks and costs.[38] Social scientific research certainly provides considerable basis for skepticism and worry.

Returning now to an analysis of public interest protection, lets review the five statements identified as necessary, and compare them with the commissions Fairness Doctrine decision. First, the public interest is more than simply an aggregate of private and self-interests. Taking then FCC Chairman Fowler's statement that the public's interest defines the public interest to me indicates Fowler's aggregating a public's interest. Second, public interest is identified with more than solely the policy and decisions of the public authorities. As shown, the commission's policy decision to use horizontal diversity as their criterion rather than traditional vertical diversity calls into question whether public interest here was not identified more with policy decisions of the public authorities than true concern for the public. The third statement, that public interest is an end or a goal which is normatively defined and, hence, not perfectly or wholly attainable has also been undermined in the FCC's decision. They simply proclaim how public interest is to be served, and never acknowledge its normative base. The goals are attained through their decision, they are not something strove for. With respect to the fourth statement, that public

[38] The commission did publish a report assessing alternatives to the Fairness Doctrine less drastic than abolition (FCC, 1987b). Without critical attention focused on the drawbacks of their own chosen alternative, the commission dismisses the other alternatives successively for their manifest weaknesses.

interest requires a recognition of personal need of the other and the realization that we are born into relationships, institutions, problems and potentialities, and the fifth statement that public interest takes as its central concern the addressing of the role of ideas about what is good for society and the importance of debating the relative merits of such ideas, the commission's decision totally fails. There is neither acknowledgement of their own ideological deference, nor an overriding acknowledgement of the welfare of a community or society. By focusing on the autonomy of broadcasters, they totally discount the need for discussion of ideas for the good of society. Instead society has been told an economic market will provide the equivalent of a marketplace of ideas. Such reasoning not only lacks substance, it is dangerous. A future in which the market rather than government regulation ensures that no broadcast station or network has undue power, one of the FCC's two original goals, does not guarantee attainment of its other goals, enhancing citizenship through diverse accountability news. Because the mass audience simply does not appear willing to pay the heavy economic costs accountability journalism entails, it seems most likely the quality of news will decline further as economic competition and efficiency grow. Broadcast journalism with or without a Fairness Doctrine operating under these constraints can only maintain the level of citizenship at its current depressed level, whether regulated or not. In this case neither the public's interest nor the public interest is served.

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